

UNITED STATES DEPARTMENT OF COMMERCE Bureau of Export Administration Washington, D.C. 20230

MAR 19 1996

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Martin Kaufman,

individually with an address at

982 Terranova Drive Ontario, Canada,

and doing business as

Tourism Consultants International P.O. Box 61 George Town, Cayman Islands British West Indies

Dear Mr. Kaufman:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, the "Department"), hereby charges that Martin Kaufman, individually and doing business as Tourism Consultants International (hereinafter collectively referred to as "Kaufman"), has violated Section 787.2 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1995)) (hereinafter, the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1995)) (hereinafter, the "Act"), as set forth below.

¹ The Regulations governing the violation at issue are found in the 1991 and 1992 versions of the Code of Federal Regulations. Those Regulations are codified at 15 C.F.R. Parts 768-799 (1991) and 15 C.F.R. Parts 768-799 (1992).

The Act expired on August 20, 1994. Executive Order 12924 (59 Fed. Reg. 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 Fed. Reg. 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1994)).

Facts constituting violation:

Charge 1

Between on or about March 26, 1991 and on or about September 12, 1992, Kaufman caused, aided or abetted the export of U.S.-origin computer equipment and related peripherals from the United States through Jamaica to Cuba without the validated export license required by Section 772.1(b) of the Regulations. By causing, aiding or abetting the doing of an act prohibited by the Act, or any regulation, order, or license issued under the Act, Kaufman committed one violation of Section 787.2 of the Regulations involving commodities controlled for reasons of national security under Section 5 of the Act.

Accordingly, Kaufman is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 788 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Revocation of validated export licenses under Section 788.3(a)(1);

General denial of export privileges under Section 788.3(a)(2);

Exclusion from practice under Section 788.3(a)(3); and/or

Imposition of the maximum civil penalty allowed by law of \$10,000 per violation or, for a violation of national security controls, \$100,000 per violation, under Section 788.3(a)(4).

A copy of Parts 787 and 788 of the Regulations is enclosed.

If Kaufman fails to answer the charges contained in this letter within 30 days after service as provided in Section 788.7 of the Regulations, that failure will be treated as a default under Section 788.8.

Kaufman is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 788.7 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a consent settlement.

Kaufman's answer should be filed with the Office of the Administrative Law Judge/Export Control, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, in accordance with the instructions in Section 788.6 of the Regulations. In addition, a copy of Kaufman's answer should be served on the Department at the address set forth in Section 788.6, adding "ATTENTION: Jeffrey E.M. Joyner, Esq." below the address. Please note that the room number for the Department is H-3839. Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,

Month Menefee

Mark D. Menefee Acting Director

Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE BUREAU OF EXPORT ADMINISTRATION WASHINGTON, D.C. 20230

In the Matter of:	
MARTIN KAUFMAN ¹	\
individually with an address at	\(\)
982 Terranova Drive Orleans, Ontario, Canada K1C5M4,	; ;
and as agent for	< <
TOURISM CONSULTANTS INTERNATIONAL P.O. Box 61 George Town, Cayman Islands	<
British West Indies,	; ;
Respondents	\$

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Martin Kaufman, individually and as agent for Tourism Consultants International (herein collectively referred to as "Kaufman"), and the Bureau of Export Administration, United States Department of Commerce (hereinafter, "BXA"), pursuant to Section 766.18(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1996)), as amended (61 *Fed. Reg.* 12714 (March 25, 1996)) (hereinafter, the "Regulation"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (hereinafter, the "Act").

¹ Kaufman submitted evidence that he was not, and is not, "doing business as Tourism Consultants International" as originally charged, but was serving as an agent for the company at the time of the alleged violation and is serving as agent for the company in executing this Settlement Agreement. Given this, the Settlement Agreement applies to both Kaufman individually and to Tourism Consultants International.

² The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25 *Federal Register* publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Part 730-774, effective April 24, 1996. The alleged violation occurred between 1991 and 1992. The Regulations governing the violation at issue are found in the 1991 and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1991) and (1992)).

³ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F,R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect

WHEREAS, on March 19, 1996, BXA initiated an administrative proceeding against Kaufman, based on allegations that, between on or about March 26, 1991 and on or about September 12, 1992, Kaufman, doing business as Tourism Consultants International, caused, aided, or abetted the export of U.S.-origin computer equipment and related peripherals from the United States through Jamaica to Cuba without the validated export license required by Section 772.1(b) of the Regulations, in violation of Section 787.2 of the Regulations;⁴

WHEREAS, Kaufman failed to answer the Charging Letter within 30 days of its service as required by and in the manner set forth in Section 788.7 of the Regulations;⁵

WHEREAS, Kaufman neither admits nor denies the allegations set forth in the Charging Letter, but wishes to settle and dispose of all allegations set forth in the Charging Letter by entering into this Settlement Agreement;

WHEREAS, Kaufman has reviewed the Charging Letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true; he fully understands the terms of this Settlement Agreement; he enters into this Settlement Agreement voluntarily and with full knowledge of his rights; and he states that no promises or representations have been made to him other than the agreements and considerations herein expressed; and

WHEREAS, Kaufman agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (hereinafter, the "appropriate Order"):

NOW, THEREFORE, Kaufman and BXA agree as follows:

- 1. BXA has jurisdiction over Kaufman, under the Act and the Regulations, with respect to the matters alleged in the Charging Letter:
- 2. Kaufman and BXA agree that the following sanction shall be imposed against Kaufman in complete settlement of the alleged violation of the Act and Regulations set forth in the Charging Letter:

under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).

⁴ At the time BXA issued its charging letter against Kaufman, the Regulations applicable to administrative proceedings were found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Since that time, as noted in footnote 1, BXA published revised regulations, the interim rule, which became effective on April 24, 1996. The interim rule governs the procedures applicable to this Order.

⁵ The Charging Letter was served on Kaufman on April 1, 1996.

- (a) Kaufman shall be assessed a civil penalty of \$10,000, which shall be paid within 30 days of the date of entry of an appropriate Order;
- (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kaufman. Failure to make timely payment of the civil penalty shall result in the denial of all Kaufman's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
- 3. Kaufman agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, he hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, (a) any right to an administrative hearing regarding the allegations in the Charging Letter; (b) any right to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) any right to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.
- 4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any further administrative proceeding against Kaufman in connection with any alleged violations of the Regulations arising out of the transactions identified in the Charging Letter.
- 5. Kaufman understands that BXA will make the Charging Letter, this Settlement Agreement and the appropriate Order, when entered, available to the public.
- 6. Kaufman and BXA agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(b) of the Regulations, Kaufman and BXA may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the settlement terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.
- 7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

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8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

U.S. DEPARTMENT OF COMMERCE

Hoyt H. Zia V. Chief Counsel

Office of Chief Counsel for Export Administration

Date: April 10, 1997

MARTIN KAUFMAN

Martin Kaufman

Individually, and

as agent for

Tourism Consultants International

Date: December 10/86

E-540-8

UNITED STATES DEPARTMENT OF COMMERCE BUREAU OF EXPORT ADMINISTRATION WASHINGTON, D.C. 20230

In the Matter of:

MARTIN KAUFMAN, 1

individually with an address at

982 Terranova Drive Orleans, Ontario Canada K1C5M4,

and as agent for

TOURISM CONSULTANTS INTERNATIONAL P.O. Box 61 George Town, Cayman Island British West Indies,

Respondents

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, "BXA"), having initiated an administrative proceeding against Martin Kaufman pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (hereinafter the "Act"), and Part 788 of

¹ Kaufman submitted evidence that he was not, and is not, "doing business as Tourism Consultants International" as originally charged, but was serving as an agent for the company at the time of the alleged violation and is serving as agent for the company in executing the Settlement Agreement. Given this, the Settlement Agreement applies to both Kaufman, individually, and to Tourism Consultants International.

The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).

the Export Administration Regulations (15 C.F.R. Parts 768-799 (1996)), as amended (61 Fed. Reg. 12714 (March 25, 1996)) (hereinafter the "former Regulations"), based on allegations that, between on or about March 26, 1991 and on or about September 12, 1992, Kaufman, doing business as Tourism Consultants International, caused, aided, or abetted the export of U.S.-origin computer equipment and related peripherals from the United States through Jamaica to Cuba without the validated export license required by Section 772.1(b) of the former Regulations, in violation of Section 787.2 of the former Regulations;

BXA and Kaufman having entered into a Settlement Agreement pursuant to Section 766.18(b) of the interim rule, 4 whereby they agreed to settle this matter in accordance with the terms and

The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996 (hereinafter "interim rule"). Currently, the Export Administration Regulations are found at 61 Fed. Reg. 12734-13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730-774 (hereinafter the "current Regulations").

The alleged violation occurred between 1991 and 1992. The Regulations which govern the violation at issue are found in the 1991 and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1991) and (1992)). At the time BXA issued its charging letter against Kaufman, the Regulations applicable to administrative proceedings were found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). The current Regulations govern the procedures applicable to this Order.

 $^{^{\}rm 4}$ The interim rule governed the settlement between BXA and Kaufman.

conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$10,000 is assessed against Kaufman, which shall be paid within 30 days of the date of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kaufman. Accordingly, if Kaufman should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order denying all of Kaufman's export privileges for a period of one year from the date of this Order.

THIRD, that a copy of this Order shall be delivered to the Office of the Administrative Law Judge, notifying that Office that the Charging Letter is withdrawn from adjudication, as provided by Section 766.18(b) of the current Regulations (61 Fed. Reg. 12911, March 25, 1996).

FOURTH, that the Charging Letter, the Consent Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Frank W. Deliberti Acting Assistant Secretary

Acting Assistant Secretary for Export Enforcement

Entered this 10th day of 6ful , 1997.